

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 869 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KALIDAS D MANGELA

Appearance:

MR K.P. RAWAL, ADDL. PUBLIC PROSECUTOR for Petitioner
MR AD SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/06/1999

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The State has appealed against the judgement and
order dated 9.9.1991 passed by the learned Sessions
Judge, Valsad, in Sessions Case No. 118 of 1989,
acquitting all the four respondents, i.e. the original
accused persons, of the offences punishable under

Sections 302, 307, 323 all read with Section 34 of the Indian Penal Code.

2. The prosecution version was that the respondents belong to Jalaram sect, while the complainant's party belongs to Swadhyay sect. A dispute had arisen during the Holi festival in the year 1988 between these parties over chanting of 'slokas' by the people belonging to Jalaram sect and there was a quarrel at that time. According to the prosecution, because of this past enmity, on 16.8.1988 in the evening at about 8 to 8.30 P.M, when deceased Sashikant Lallubhai and another person Manilal Lallubhai were returning from the sea-shore, these respondents armed with weapons like stick, pipe, pounder etc. attacked them, causing grievous injuries to Sashikant Lallubhai, who ultimately succumbed to the injuries in the hospital at Surat. It is also the prosecution case that these respondents had attacked around the same time and near the sea-shore, the prosecution witnesses Govind Zepru and Pravin Balu, causing them several injuries. Pravin Balu had filed the complaint as regards the attack by the respondents. In the complaint, he had stated that he had received stick blows on his left arm and left leg. In the background of these facts, the accused persons were charged for the offences under Sections 302, 307 and 323 all read with Section 34 of the Indian Penal Code. The defence of the respondents was of a total denial. The trial Court, on the basis of the nature of evidence on record, came to a finding that the prosecution failed to establish the guilt of any of these accused persons and acquitted all of them.

2. We have been taken through the entire evidence. It transpires that most of the witnesses except Pravin Balu and Manilal Lallubhai, turned hostile and there is no corroborative evidence to whatever little support these two witnesses have given to the prosecution. Pravin Balu, who is the complainant had stated in the FIR that he was chatting with his great grand uncle Govindbhai in the evening around 7.30 P.M near the sea-shore and around 8'O Clock these respondents had come armed with weapons and asked him as to who he was, and thereupon he disclosed his name. They threatened him and asked him to go away. Thereafter, they started beating Govindbhai Zepru with sticks. He has stated that the respondent No.1 - original accused No.1 Kalidas Dhiraj Mangela gave a stick blow to him on his left hand between elbow and shoulder and also on his left leg. He has stated that the other three persons were beating his great grand uncle at that time. He therefore raised

shouts and the persons named by him came there and on seeing them, these respondents ran away. Thereafter, they brought Govindbhai to the house. When he was proceeding to his house, he was told by one Amratlal Gajanand that these very respondents had also beaten Sashikant Lallubhai. This complaint was recorded at 5.50 A.M on 17th August, 1989. Pravinbhai in his deposition Ex.32 has stated that at the time of the incident, these respondents had come and started beating his great grand uncle and thereupon he asked them as to what wrong had the old man committed. It is thereafter, that they asked him as to who he was and when he gave his name as Pravin, they told him to go away, otherwise he would be beaten. They then started beating him and he raised shouts and ran away to his village. He has stated that the respondent No.1 had given a stick blows on his left hand and left leg. He has further stated that since he was frightened that he may be killed, he had gone away to the house of Narmada and slept there till the morning around 4'O clock when the police came. He had then gone with the police and given the complaint Ex.33. This witness does not say anything about his having been told about the assault on Sashikant, which fact was mentioned in the complaint. He had not seen any assault on Sashikant. The time of the incident/attack on Sashikant and Govind Zepru was around 8 to 8.30 P.M. The place alleged by the prosecution was the sea-shore. There was no separate FIR filed in respect of the assault on Sashikant. The chronology of events given by this witness in the complaint as regards the respondents coming and assaulting them is somewhat different from what he has stated in the deposition. Earlier, in the complaint, his version was that these persons had come there and asked him as to who he was and had asked him to go away and thereafter they started beating his great grand uncle, while before the Court he has stated that they come and straight away started beating his great grand uncle and on his asking them as to why they were doing so and on enquiring as to what wrong had he done, he was asked about his name. The version of this witness in the complaint as well as in the deposition that he was given stick blows on his left hand and left leg, is not supported by the medical evidence. There were some minor injuries noticed on his right hand and right leg, but the witness has in his complaint as well as deposition categorically stated that he had received injuries on his left hand and left leg. In the complaint, he had stated that he had raised cries at the time of the incident and therefore, people of his locality Amrutbhai Gaju and Nilkanth Pasu had all come there and on seeing them, these respondents had run away. That is not the story in

his deposition. In his deposition he had stated that he himself had run away and fearing that he might be killed, he had gone and slept at Narmada's house. There is therefore, inconsistency on major aspects in the versions this witness gave in the complaint and before the Court. The trial Court has therefore, rightly held that this witness could not be relied upon for holding the respondents guilty of these offences. The major jolt that the deposition of this witness gets, is from his great grand uncle Govindbhai Zepru, who in his deposition at Ex.45 has stated that he was assaulted while he was sleeping on a cot and that he did not know who had given him the blows. According to him after being beaten he was thrown near the sea-shore by someone. In his cross-examination he has stated that he was sleeping on a cot near his house when he was assaulted. In paragraph 6 of his deposition, in his cross-examination, he has alleged that the complainant Pravinbhai had assaulted him. Therefore, the prosecution version as regards the assault on Govind Zepru crumbles down.

3. As regards the assault on Sashikant, which resulted in his death, the prosecution has relied on the deposition of witness Manilal at Ex.34, who has stated that these respondents armed with stick, pipe, bamboo and pounder had met them while they were returning from the sea-shore around 8.30 P.M. on the day of the incident and at that time a blow was given on the right leg of his brother Sashikant by them. Thereafter, all these respondents started beating Sashikant. When they turned to beat this witness, he ran away towards his house shouting for help. There, his uncle's sons Jayanti and Chandrakant and one Ravindra had come and asked as to what had happened. Thereafter, they went to the sea-shore and found that Sashikant was lying unconscious and they lifted him from there to home and thereafter took him to the hospital. They had ultimately taken him to the Surat hospital, where he died. Jayanti, Chandrakant and Ravindra are not examined. In paragraph 7 of his deposition, he has admitted in the cross-examination that he has not stated before the police anything about the blow having been given on the leg of his brother Sashikant.

It transpires from his cross-examination that he did not disclose about the incident before the police officer, who had come to his house around 4'O Clock in the morning. In paragraph 4 of his deposition, he has stated that police inspector Sagar was known to him and when he had arrived at 4'O Clock in the morning, he had not asked as to how Sashikant was injured. He has stated

that even he or any other person did not disclose to police inspector Sagar as to how Sashikant came to be injured. It is also significant to note that in the history which was given to the doctor about the incident by this witness when Sashikant was carried to the hospital, he had stated that the assault was by some unknown weapon while in the Court he poses to know the weapons held by each of the respondents at the time of the assault. The deposition of this witness therefore, does not inspire any confidence and the trial Court has rightly not placed any reliance on it.

Witness Ansuyaben Kalidas in her deposition at Ex. 39 also does not help the prosecution because she states that when she had gone to the sea-shore, she did not see Sashikant and that she did not know what had happened thereafter. The deposition of Amratlal Gajanand Mangela Ex.40 also does not assist the prosecution because he had not seen the incident and he only states that he had gone to the sea-shore on hearing the shouts and seen Sashikant lying unconscious with injuries.

4. It will be seen that Manilal does not refer to any incident on the sea-shore of the respondents attacking Govind Zepru and Pravinbhai. Witness Pravinbhai does not refer to any incident of these respondents attacking Sashikant. The map Ex.36 shows distance of half a furlong between the two spots where these two incidents are said to have occurred. It appears that the map/panchnama was prepared on the basis of what was shown by witness Pravinbhai. Witness Pravinbhai had never claimed to have seen the incident of Sashikant being assaulted. It is therefore, surprising how he could have shown the place to the panchas where Sashikant was being assaulted. The two incidents of assault by the respondents are said to have been taken place around the same time and in the same place and yet Pravinbhai and Manilal confined their depositions to one incident each. According to Govind Zepru, the incident of attack on him had taken place near his house while he was sleeping on a cot. Therefore, the totality of the facts and circumstances which are on record, shows that the prosecution has miserably failed to establish the guilt of these respondents and the trial Court was therefore, in our opinion, right in acquitting them. The acquittal appeal is therefore, dismissed. Bail bonds of these respondents stand cancelled.

* /Mohandas